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The Implied Law of Habitability

By dan the roommate man

The Implied Law of Habitability by dan the roommate man

Tenants and landlords are expected to fulfill certain duties, but what are they? It's sometimes hard to distribute the chores and responsibilities between landlords and tenants. Typically, these things are mutually agreed on once the lease is signed. However, Dessen, Moses & Sheinoff, Attorneys at law say that residential tenants are granted with at least one inalienable right regardless of what the lease says: the implied warranty of habitability.

According to DM & S, "this means that the leased premises must meet those minimum standards to make it safe for the tenant to live there." Unfortunately, aesthetically unpleasant flaws do not fit under the category of "things to be fixed by the landlord." So, if you have a squeaky door or floor, ugly green shag carpeting or peeling paint, contrary to your desires, the landlord is not responsible for their repair unless he agrees to be in the lease. Each state has their own warranty of habitability law much like the one for New York which states:

"In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety."

This is just a fancy way of saying that the building must meet all state building codes, have heat in the winter, suitable drinking water, be sanitary and structurally sound. If these conditions are not met, the tenant is allowed to withhold the rent until the conditions or problems are restored to order. In extreme or prolonged situations, the tenant is able to terminate the lease agreement.

According to Rental Housing On Line, one court noted that "in the case of the modern apartment dweller, the value of the lease is that it gives him a place to live. The city dweller who seeks to lease an apartment on the third floor of a tenement has little interest in the land 30 or 40 feet below, or even in the bare right to possession within the four walls of his apartment. When American city dwellers, both

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rich and poor, seek 'shelter' today, they seek a well known package of goods and services. A bundle which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance." All these things are accounted for in the implied law of habitability – your inalienable right as a tenant.

If you feel your habitability right is being violated, you should contact your local tenants union. You may wish to deal with problems directly by speaking with the Building Inspection Department of your city for structural concerns, and the county health department or city code enforcement officer for health concerns.

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What Are Your Landlord's Responsibilities?

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Curious about what exactly your landlord is responsible for? Here's a list of things your landlord can and cannot do.

According to law, you landlord must...

- (a) make sure that your house or apartment complies with all building, housing and health codes that significantly affect your health and safety. If you feel your landlord is not following the building, housing or health codes, you should contact your local tenant's union.
- (b) make all repairs necessary to make your house or apartment livable. Keep in mind that this means your landlord is responsible for NECESSARY repairs, not repainting your front door for aesthetic appeal.
- (c) take care that all electrical, plumbing, heating and ventilation systems are in good working order.
- (d) supply sufficient amounts of hot water and heat at all times.
- (e) keep the hallways and stairways safe and sanitary.
- (f) provide garbage cans (if he or she owns four or more units in your building).*
- (g) give you reasonable notice before he or she enters your apartment

Your landlord must not...

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(a) increase your rent, decrease your services, issue or even threaten to issue an eviction as a result of your complaining to him or to the city about a code violation or because you joined a tenants' union of some sort. As long as you are assembling peaceably, you have a constitutional right to join whatever group you want to.

(b) shut off any of your utilities, change the locks on your apartment or threaten any of these acts in order to make you move out of your apartment.

(c) enter your apartment without consulting you or repeatedly demand to enter. In most leases there is a clause stating that the landlord must give you reasonable notice before entering. Typically, leases will state that your landlord must give you at least twenty-four hours notice before entering. Also, if your landlord is constantly entering your apartment – whether he or she gives notice or not – you don't have to withstand it. You should consult your local tenant's union.

(d) refuse to rent a unit to you due to your race, sex, religion, age, previous condition of servitude, physical limitation, national origin or sexual preference. If your landlord has done any of these things,

you have been discriminated against and may be able to take the case to court.

Regardless of whether or not you're behind on your rent, your landlord still has no right to do any of the things mentioned in the "must not" list. If your landlord does any of these things, you should consult an attorney. In some cases such as forced entry or theft, the landlord should be reported to the police as well.

*A–F are enforced by the Implied Law of Habitability.

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